

BOTSWANA 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Botswana is a constitutional, multiparty, republican democracy. Its constitution provides for the indirect election of a president and the popular election of a National Assembly. In October 2014 the ruling Botswana Democratic Party (BDP) won the majority of parliamentary seats in an election deemed generally free and fair. President Ian Khama retained his position. The BDP has held the presidency and a majority of National Assembly seats since independence in 1966.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included excessive use of force and abuse by security personnel; lengthy judicial delays; government attempts to limit freedoms of the press and assembly; mistreatment of asylum seekers and refugees; corruption; sexual and gender-based violence against women and children; economic and political marginalization of the Basarwa (San) people; and government curtailments of the right to strike.

The government took steps to prosecute officials who committed abuses. Impunity was generally not a problem.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution and law prohibit such practices, but there were reports of police using such tactics. Some laws prescribe corporal punishment for offenders. Some

human rights groups viewed these provisions as cruel and degrading; the Court of Appeals ruled these provisions do not violate the constitution's provisions on torture or inhuman treatment.

Survival International, a UK-based nongovernmental organization (NGO), claimed that in July 2016 police on an antipoaching operation shot from a helicopter at a group of Basarwa (San) hunting in the Central Kalahari Game Reserve (CKGR). Survival International stated nine of the men were later stripped and beaten while in police custody. The Botswana Police Service (BPS) denied the claims.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards and continued to improve with further reduction of inmate overcrowding.

Physical Conditions: Authorities occasionally held juveniles with adults, although only for a few days while awaiting transport.

The Center for Illegal Immigrants (CII) in Francistown is a dedicated facility for processing asylum and other immigration claims by individuals who entered the country illegally. According to the UN High Commissioner for Refugees (UNHCR) in 2016, conditions in the CII deteriorated considerably and no longer met minimum standards. UNHCR reported authorities housed some women and child asylum seekers in tents that were prone to leaking during rains. Sanitary conditions were inadequate, increasing the risk of communicable diseases. Safety was also an issue, and a minor asylum seeker was reportedly sexually assaulted.

Administration: Prison recordkeeping was adequate but utilized mostly paper records, and there was no plan to upgrade to computerized systems.

Authorities investigated credible allegations of inhuman conditions brought by inmates against prison officials and took disciplinary or judicial action against persons responsible for abuses. The law requires visits to prisons on a quarterly basis.

Independent Monitoring: The government generally allows access to prisoners by international and local NGOs and permitted independent human rights observers to visit prisons. The International Committee of the Red Cross visited prisons.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The BPS, under the Ministry of Defense, Justice, and Security in the Office of the President, has primary responsibility for internal security. The Botswana Defense Force (BDF), which reports to the president through the minister of defense, justice, and security, is responsible for external security and has some domestic security responsibilities. The Directorate for Intelligence and Security Services (DISS), under the Office of the President, collects and evaluates external and internal intelligence, provides personal protection to high-level government officials, and advises the presidency and government on matters of national security. Civilian authorities maintained effective control over the BPS, BDF, and DISS, and the government had effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving security forces.

BPS officers received human rights training at the country's International Law Enforcement Academy.

Arrest Procedures and Treatment of Detainees

Police must produce an arrest warrant issued by a duly authorized magistrate upon the presentation of compelling evidence, except in certain cases, such as when an officer witnesses a crime being committed or discovers a suspect is in possession of a controlled substance. DISS personnel have the power to enter premises and make arrests without warrants if the agency suspects a person has committed or is about to commit a crime. Elements of civil society continued to criticize the DISS, claiming it did not receive sufficient independent oversight and posed a potential threat to civil liberties.

The law requires authorities to inform suspects of their rights upon arrest, including the right to remain silent, and to file charges before a magistrate within 48 hours. Authorities generally respected these rights. There were no reports of denial of a suspect's right to an attorney during the first 48 hours after arrest and arraignment before a magistrate. A magistrate may order a suspect held for 14 days through a writ of detention, which may be renewed every 14 days. The law provides for a prompt judicial determination of the legality of a person's detention. Heavy court caseloads occasionally delayed this determination. Authorities

generally informed detainees of the reason for their detention, although there were some complaints this did not always occur. There is a functioning bail system, and detention without bail was unusual except in murder cases, where it is mandatory. Detainees have the right to contact a family member and hire attorneys of their choice but most could not afford legal counsel. There were no reports authorities held suspects incommunicado or under house arrest.

Pretrial Detention: A writ of pretrial detention is valid for 14 days and is renewable every 14 days. Some detainees, however, waited several weeks or months between the filing of charges and the start of their trials. Pretrial detention in murder, rape, livestock theft, and robbery cases sometimes exceeded a year, but there were no reports of instances in which the length of detention equaled or exceeded the sentences later actually imposed. Delays were largely due to judicial staffing shortages.

Detainee's Ability to Challenge Lawfulness of Detention before a Court:

Detainees are entitled to challenge in court the legal basis or arbitrary nature of their detention and obtain prompt release and compensation if found to have been unlawfully detained.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence. The civil courts remained unable to provide timely trials due to severe staffing shortages and a backlog of pending cases.

Trial Procedures

The constitution and law provide for the right to a fair and public trial, and an independent judiciary generally enforced this right. Defendants enjoy a presumption of innocence, and authorities generally informed them promptly and in detail of the charges against them, with free interpretation from the moment charged through all appeals if he or she cannot understand the language of the court. Trials in the civil courts are public, although trials under the National Security Act may be secret. Defendants have the right to be present and consult with an attorney in a timely manner. In capital cases the government provides legal counsel, or private attorneys work pro bono for indigent clients. Courts tried those charged with noncapital crimes without legal representation if they could not afford an attorney. As a result, many defendants were not aware of their

procedural rights in pretrial or trial proceedings. Defendants may question witnesses against them. Defendants may present witnesses and evidence on their own behalf. Defendants have the right to adequate time and facilities to prepare their defense and to appeal. Defendants are not compelled to testify or confess guilt. The constitution states these rights extend to all citizens. Some NGOs provided limited, free legal assistance.

In addition to the civil court system, a customary or traditional court system also exists. According to traditional practice, a tribal chief presides over most small villages. While customary (traditional) courts enjoyed widespread citizen support and respect, they often did not afford the same due process protections as the formal court system. Although defendants may confront, question, and present witnesses in customary court proceedings, they do not have legal counsel, and there are no standardized rules of evidence. Customary trials are open to the public, and defendants may present evidence on their own behalf. Tribal judges, appointed by the tribal leader or elected by the community, determine sentences. Many tribal judges were poorly trained. The quality of decisions reached in the customary courts varied considerably, and defendants often lacked a presumption of innocence. Tribal judges applied corporal punishment, such as lashings on the buttocks, more often than did civil courts. Those convicted in customary courts may file appeals through the civil court system.

Small-claims courts were established in 2009 in Francistown and Gaborone. There were reports of heavy caseloads and new procedures limiting the courts' effectiveness. Many cases remained delayed for several months, and the National Legal Association criticized judges who did not deliver rulings in a timely manner.

A separate military court system does not try civilians. Military courts have separate procedures from civil courts. Defendants in military courts are able to retain private attorneys at their own expense and see evidence to be used against them. Defendants in military court can have their cases transferred to the civilian judicial system. Additionally, military personnel can take other military personnel to civilian civil court.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

In the formal judicial system, there is an independent and impartial judiciary in civil matters, including for human rights cases, which includes a separate industrial court for most labor-related cases. Administrative remedies were not widely available. By mutual agreement of the parties involved, customary courts, which handle land, marital, and property disputes, tried most civil cases; they often did not afford the same due process protections as the formal judicial system. The country has not ratified the protocol that established the African Court of Human and Peoples' Rights, although individuals and organizations may file complaints regarding domestic decisions with the African Commission on Human and Peoples' Rights.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution and law prohibit such actions, and there were no reports the government failed to respect these prohibitions.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

Freedom of Expression: The constitution and law provide for freedom of speech and press, however the law restricts the speech of some government officials and fines persons found guilty of insulting public officials or national symbols. The law states, "Any person in a public place or at a public gathering (who) uses abusive, obscene, or insulting language in relation to the president, any other member of the National Assembly, or any public officer" is guilty of an offense and may be fined up to 400 pula (\$40). The penal code also states that any person who insults the country's coat of arms, flag, presidential standard, or national anthem is guilty of an offense and may be fined up to 500 pula (\$50).

Press and Media Freedom: NGOs and media reported the government attempted to limit press freedom. The government dominated domestic broadcasting.

The government owned and operated the Botswana Press Agency, which dominated the print media through its free, nationally distributed newspaper, *Daily News*, and two state-operated FM radio stations. State-owned media generally featured reporting favorable to the government and, according to some observers, were susceptible to political interference. Opposition political parties claimed state media coverage heavily favored the ruling party. The government ombudsman

stated in an August 28 report that public broadcaster Botswana Television “unduly favored” the ruling party in its political coverage.

The independent media were active and generally expressed a wide variety of views, which frequently included strong criticism of the government; however, members of the media complained they were sometimes subject to government pressure to portray the government and country in a positive light. Private media organizations had more difficulty than government-owned media obtaining access to government-held information.

Violence and Harassment: In March, DISS agents reportedly detained and threatened three journalists from the INK Center for Investigative Journalism near President Khama’s private residence in Mosu. The journalists were researching claims that public funds were being used to construct the residence.

Censorship or Content Restrictions: Some members of civil society organizations alleged the government occasionally censored stories in the government-run media it deemed undesirable. Government journalists sometimes practiced self-censorship. The government banned private radio station GabzFM from broadcasting live content after it aired a controversial live interview with anti-lesbian, gay, bisexual, transgender, and intersex (LGBTI) American pastor Steven Anderson in September 2016.

Libel/Slander Laws: In 2014 police arrested *Sunday Standard* editor Outsa Mokone and charged him with sedition for publishing articles about an automobile accident allegedly involving President Khama. Observers noted the use of the penal code’s sedition clause for a newspaper article was unprecedented and further noted the *Sunday Standard* had published several articles exposing corruption allegations within the DISS. In 2016 lawyers for Mokone sought to have the charges dropped based on the penal code’s infringement of the defendant’s constitutional right to freedom of expression. That same year the High Court ruled the penal code’s sedition clause was constitutional and charges of sedition against Mokone could proceed. The case was still pending at year’s end.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. According to the

International Telecommunication Union, in 2015 approximately 27 percent of individuals used the internet.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedoms of Peaceful Assembly and Association

The constitution and law provide for the freedoms of assembly and association, and the government generally respected these rights.

Freedom of Peaceful Assembly

The constitution and law provide for freedom of assembly, and the government generally respected these rights.

In February tertiary students protested delays in student allowance payments and course accreditation in a series of riots in Gaborone. There were media reports the BPS used rubber bullets, tear gas, and rubber whips to disperse crowds. One student was reportedly shot with a rubber bullet and others beaten. A student claimed to have been mistreated while in police custody based on her transgender identity, saying police made her strip to disclose her gender.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The system for granting refugee status was accessible but slow. The government generally provided protection against the expulsion or return of persons to

countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

The government generally cooperated with UNHCR and other humanitarian organizations in assisting more than 2,800 refugees, asylum seekers, and other persons of concern. The government held refugees and asylum seekers in CII in Francistown until the Refugee Advisory Committee (RAC), a governmental body, made a status recommendation. The committee met four times during the year. UNHCR representatives participated in advisory committee meetings as observers and technical advisers. Through September, RAC authorities approved refugee status for 37 minors who received derivative status from their parents.

The ministry of defense, justice, and security introduced biometric identity cards for refugees and asylum seekers.

The government applies the principle of first country of asylum; on that basis in 2015 it detained more than 400 individuals, many of whom had received refugee status in a third country and then entered the country illegally and claimed asylum.

In November the Court of Appeal ruled only recognized refugees were authorized to reside at Dukwi Refugee Camp, and asylum seekers who were transferred there earlier in the year based on a July High Court order should be returned to the CII. The ruling prompted the majority of the asylum seekers to flee the camp rather than be returned to the CII, where they had allegedly been physically abused by guards and prison inmates. More than 400 persons, including more than 200 children, sought asylum during 2015; the majority were from the Democratic Republic of the Congo. Composed mainly of families that had transited Zambia and Tanzania, the RAC refused their claims based on its “first country of asylum” policy and held the families at the CII while they awaited deportation. UNHCR urged the government to review its decision to deny asylum and to keep the asylum seekers at the CII, where authorities separated families, and women and children lived in tents in substandard conditions. Prior to July, asylum seekers were housed at the CII with inmates from the local men’s prison while it underwent refurbishment. Security at the CII was a concern, and an inmate allegedly sexually assaulted a 12-year-old male asylum seeker. There were reports food rations provided to asylum seekers were inadequate.

In December the private weekly *The Botswana Gazette* ran a 16-page special report by the INK Center for Investigative Journalism summarizing a four-month

investigation into the treatment of the asylum seekers at the CII. According to the report, the asylum seekers said Botswana authorities physically abused them.

Employment: As of August most of the country's 2,153 registered refugees and 727 registered asylum seekers were living in Dukwi Camp without the right to work outside the camp. As a general policy, all registered refugees must reside in Dukwi under a strict encampment policy, although the government may issue a residence permit to remain outside the camp in exceptional cases, such as for refugees enrolled at a university, in need of specialized medical care, or with unique skills.

Access to Basic Services: Refugees in Dukwi had access to education and basic health care. They were unable to access government programs for HIV/AIDS medication, but the government allowed an international donor-funded parallel program to provide such medication. UNHCR facilitated refugee and asylum seekers' exit permit applications for medical referrals as necessary through their implementing partner, the Botswana Red Cross. Officials typically granted exit permits for three days; refugees found outside the camp without a permit were subject to arrest.

According to UNHCR there was no access to education in the CII. The center hosts a clinic, and a specialized nurse provides basic health care, while critical cases were referred to the Francistown city hospital.

Durable Solutions: According to UNHCR, as of October there were 27 voluntary repatriations of Namibian and Zimbabwean refugees.

Temporary Protection: The government provided temporary protection at Dukwi to individuals who may not qualify as refugees under the 1951 UN Refugee Convention or the 1967 Protocol. UNHCR provided food and other provisions to individuals under temporary protection.

Section 3. Freedom to Participate in the Political Process

The constitution and law provide citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: In 2014 the ruling BDP won a majority of National Assembly seats in a general election deemed by international and domestic observers to be generally free and fair. President Ian Khama retained the presidency, which he had held since 2008.

Participation of Women and Minorities: There are no laws limiting the participation of women and minorities in the political process, and they did participate. Nevertheless, observers suggested cultural constraints limited the number of women in government. There were six women in the 65-seat National Assembly, one of whom was the speaker and four of whom served in the 24-member cabinet. There were also two women in the 34-seat House of Chiefs.

While the constitution formally recognizes eight principal tribes of the Tswana nation, amendments to the constitution also allow minority tribes to be represented in the House of Chiefs. The law provides that members from all groups enjoy equal rights, and minority tribes have representation in the House of Chiefs in equal standing to that of the eight principal tribes.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally sought to implement these laws effectively. Officials tasked with enforcement lacked adequate training and resources, however. Media reports of government corruption increased during the year.

Corruption: In past years police officials acknowledged corruption was a problem in the lower ranks, and some officers took advantage of irregular immigrants and traffic violators by exacting bribes.

The press continued to publish information leaked from a Directorate on Corruption and Economic Crime (DCEC) investigation of the director of the DISS, a story first reported in 2014. The documents allegedly demonstrated substantive links to corruption and money laundering. At year's end the director retained his position, and the DCEC had not initiated any action against him.

Financial Disclosure: There are no formal financial disclosure laws; however, a 2009 presidential directive requires all cabinet ministers to declare their interests, assets, and liabilities to the president. Critics contended this policy did not go far enough to promote transparency and asserted financial declarations by senior government officials should be available to the public.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

The small number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to domestic NGO views on most subjects. The government interacted with and provided financial support to some domestic organizations.

Government Human Rights Bodies: An ombudsman within the Office of the President handled complaints of maladministration, including some human rights abuses in the public sector, and the government generally cooperated with the ombudsman. The Office of the Ombudsman had inadequate staff, however. In August the ombudsman released a report stating public national broadcaster Botswana Television “unduly favored” the ruling BDP in its political coverage.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape but does not recognize spousal rape as a crime. Authorities effectively enforced laws against rape when victims pressed charges; however, police noted victims often declined to press charges against perpetrators. By law the minimum sentence for rape is 10 years in prison, increasing to 15 years with corporal punishment if the offender is HIV-positive and unaware, and 20 years with corporal punishment if the offender is HIV-positive and aware. By law formal courts try all rape cases. A person convicted of rape is required to undergo an HIV test before sentencing.

The law prohibits domestic and other violence, whether against women or men, but it remained a serious problem.

Sexual Harassment: The law prohibits sexual harassment in both the private and public sectors. Sexual harassment committed by a public officer is considered misconduct and punishable by termination, potentially with forfeiture of all retirement benefits; suspension with loss of pay and benefits for up to three months; reduction in rank or pay; deferment or stoppage of a pay raise; or reprimand. Nonetheless, sexual harassment, particularly by men in positions of authority, including teachers, continued to be a widespread problem.

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

Discrimination: Under the constitution, women and men have the same civil rights and legal status, but under customary law based on tribal practice, a number of traditional laws restricted women's property rights and economic opportunities, particularly in rural areas. Women increasingly exercised the right to marriage "out of common property," in which they retained their full legal rights as adults. There is no legal requirement that women receive equal pay for equal work.

In May President Khama signed the Revised Southern African Development Community (SADC) Protocol on Gender and Development.

Children

Birth Registration: In general citizenship is derived from one's parents, although there are limited circumstances in which citizenship may be derived from birth within the country's territory. The government generally registered births promptly; however, unregistered children may be denied some government services. For additional information, see Appendix C.

Education: Primary education was tuition-free for the first 10 years of school but not compulsory. Parents must cover school fees as well as the cost of uniforms and books. These costs could be waived for children whose family income fell below a certain level.

Child Abuse: Child abuse occurred and often was reported to police in cases of physical harm to a child. Police referred the children and, depending on the level of abuse, their alleged abuser(s) to counseling in the Department of Social Services within the Ministry of Local Government and Rural Development, as well as to local NGOs. Police referred some cases to the Attorney General's Office for prosecution.

Early and Forced Marriage: Child marriage occurred infrequently and was largely limited to certain tribes. The government does not recognize marriages that occur

when either party is under the minimum legal age of 18. For additional information, see Appendix C.

Sexual Exploitation of Children: The law prohibits the prostitution and sexual abuse of children. Sex with a child younger than 16, including a prostituted child, constitutes defilement and is punishable by a minimum of 10 years' incarceration.

Child pornography is a criminal offense punishable by five to 15 years in prison.

Displaced Children: In 2013 UNICEF, which defines an orphan as a child with one or both parents deceased, estimated there were 130,000 orphans in the country, of whom approximately 96,000 had lost one or both parents due to HIV/AIDS. The government, which defines an orphan as a child both of whose parents are dead, registered 38,596 children as orphans and 32,068 as vulnerable in 2013. Once registered as an orphan, a child receives school uniforms, shelter, a monthly food basket worth between 216 pula (\$22) and 600 pula (\$60), depending upon location, and counseling as needed.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at travel.state.gov/content/childabduction/en/legal/compliance.html.

Anti-Semitism

There was a very small Jewish population, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with disabilities, but does not prohibit discrimination by private persons or entities. The government's policy provides for integrating the needs of persons with disabilities into all aspects of policymaking. It mandates access to public buildings or transportation for persons with disabilities, but access for persons with disabilities was limited. Although

new government buildings were being constructed in such a way as to provide access for persons with disabilities, older government office buildings remained largely inaccessible. Most new privately owned commercial and apartment buildings provided access for persons with disabilities.

Children with disabilities attended school, although a human rights NGO raised concern the Children's Act does not guarantee accessible education to children with disabilities. The government made some accommodations during elections to allow for persons with disabilities to vote.

There was a Department of Disability Coordination in the Office of the President to assist persons with disabilities. The Department of Labor in the Ministry of Employment, Labor Productivity, and Skills Development is responsible for protecting the rights of persons with disabilities in the labor force and investigating claims of discrimination. Individuals may also bring cases directly to the Industrial Court. The government funded NGOs that provided rehabilitation services and supported small-scale projects for workers with disabilities.

Indigenous People

The government does not recognize any particular group or tribe as indigenous. The eight tribes of the Tswana group, which speak a mutually intelligible dialect of Setswana, have been politically dominant since independence, are officially recognized by law, and were granted permanent membership in the House of Chiefs. Constitutional amendments subsequently enabled the recognition of other tribes.

English and Setswana are the only officially recognized languages, a policy human rights organizations and minority tribes criticized particularly with regard to education, where some children were forced to learn in a nonnative language.

An estimated 50,000 to 60,000 persons belong to one of the many scattered, diverse tribal groups known collectively as Basarwa or San. The Basarwa constituted approximately 3 percent of the population and are culturally and linguistically distinct from most other residents. The law prohibits discrimination against the Basarwa in employment, housing, health services, or because of cultural practices; however, the Basarwa remained marginalized economically and politically and generally did not have access to their traditional land. The Basarwa continued to be geographically isolated, had limited access to education, lacked

adequate political representation, and some members were not fully aware of their civil rights.

The government interpreted a 2006 High Court ruling against the exclusion of Basarwa from traditional lands in the CKGR to apply only to the 189 plaintiffs, their spouses, and their minor children. Many of the Basarwa and their supporters continued to object to the government's interpretation of the court's ruling. Negotiations between Basarwa representatives and the government regarding residency and hunting rights in the CKGR stalled after a separate court ruling provided the right to access water through boreholes.

Government officials maintained the resettlement program was voluntary and necessary to facilitate the delivery of public services, provide socioeconomic development opportunities to the Basarwa, and minimize human impact on wildlife. In 2012 the UN Permanent Forum on Indigenous Issues approved a set of nine draft recommendations addressing the impact of land seizures and disenfranchisement of indigenous people. In 2013 attorneys for the Basarwa filed a High Court case in which the original complainants from the 2006 CKGR case appealed to the government for unrestricted access (i.e., without permits) to the CKGR for their children and relatives.

There were no government programs directly addressing discrimination against the Basarwa. With the exception of CKGR lands designated in the 2006 court ruling, there were no demarcated cultural lands.

In previous years, the government charged Basarwa with unlawful possession of hunted carcasses. In 2014 five Basarwa filed a lawsuit against the minister of environment, natural resource conservation, and tourism over the hunting ban in the CKGR; the case was pending at year's end.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The law does not explicitly criminalize consensual same-sex sexual activity, but it includes language criminalizing some aspects of same-sex sexual activity. What the law describes as "unnatural acts" are criminalized with a penalty of up to seven years' imprisonment, and there was widespread belief this was directed toward LGBTI persons. There were no reports police targeted persons suspected of same-sex sexual activity. LGBTI-rights organizations claimed there were incidents of violence, societal harassment, and discrimination based on sexual orientation or

gender identity. The victims of such incidents seldom filed police reports, primarily due to stigma but occasionally as a result of overt intimidation.

In September the High Court ruled in favor of a transgender man who sued the Registrar of National Registration to change the gender indicated on his government-issued identity document from female to male. In a separate case, on December 12, the Gaborone High Court ordered the Registrar of Births and Deaths to amend the gender marker on a transgender applicant's birth certificate from male to female within seven days, and to reissue the applicant's national identity document within 21 days.

Public meetings of LGBTI advocacy groups and debates on LGBTI issues occurred without disruption or interference. In March 2016 the Court of Appeals upheld a 2014 High Court ruling ordering the government to formally register LeGaBiBo (Lesbian, Gays, and Bisexuals of Botswana), a group that advocates for LGBTI rights. LeGaBiBo has since participated in government-sponsored events.

HIV and AIDS Social Stigma

The HIV prevalence rate was 18 per cent in the general population. According to the UNFPA, limited access to sexual and reproductive health information and youth-friendly services, as well as gender-based violence, contributed to high HIV rates. The government funded community organizations that ran antidiscrimination and public awareness programs.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the rights of workers, except police, military, and prison personnel, to form and join independent unions and to bargain collectively. Some workers are provided the right to strike. Employee associations, which serve as a means to communicate collective needs and concerns to their government employer, represent police, military, and prison personnel. Union representatives reported that employee associations were generally not as effective as unions in resolving labor disputes.

The law limits the right to organize. Trade unions that fail to meet the formal registration requirements are automatically dissolved and banned from carrying out union activities. The law does not protect members of unregistered trade unions

and does not fully protect union members from antiunion discrimination. The law imposes a number of substantive requirements on the constitutions and rules of trade unions and federations of trade unions. The law also authorizes the registrar to inspect accounts, books, and documents of a trade union at “any reasonable time” and provides the minister of defense, justice, and security with the authority to inspect a trade union “whenever he considers it necessary in the public interest.” Employers have the right to ask the registrar to withdraw recognition of a union, and the Ministry of Employment, Labor Productivity, and Skills Development has the right to suspend a union if it is “in the public interest,” although the former practice is uncommon and the latter has never been employed.

The law provides for collective bargaining only for unions that have enrolled one-third of a sector workforce. The law does not allow employers or employers’ organizations to interfere in the establishment, functioning, or administration of trade unions. The law provides a framework for either employers or unions to nullify collective bargaining agreements, and provides a mechanism for the other party to dispute the nullification. The law also permits an employer or employers’ organization to apply to the government to withdraw the recognition granted to a trade union if it establishes that the trade union refuses to negotiate in good faith with the employer. There were no such cases during the year.

Employees in “essential services”--including the Bank of Botswana, railway services, health care, firefighting, military, transport services, telecommunications infrastructure, electricity, water, and sewage workers--are not legally permitted to strike. In 2016 parliament passed and President Khama signed the amended Trade Disputes Act (TDA), codifying the list of essential services and expanding it to include teachers, veterinarians, and diamond cutters. Many of the occupations included in the TDA list fall outside the International Labor Organization’s definition of essential services.

The law empowers two officials within the Ministry of Employment, Labor Productivity, and Skills Development (the minister and the commissioner of labor) to refer a dispute in essential services to arbitration or to the Industrial Court for determination.

Civil service disputes are referred to an ombudsman for resolution, and in general, the ombudsman’s decisions are made independently without government interference. Labor commissioners mediate private labor disputes, and if not resolved within 21 days as required by the amended TDA, they are sent to the

Industrial Court. The average case brought to the Industrial Court took two years to resolve, and as of October 2016 there was a backlog of 311 pending cases.

The law allows formally registered unions to conduct their activities without interference and with protection from antiunion discrimination. Workers may not be terminated for legal union-related activities. Dismissals may be appealed to civil courts or labor officers, which rarely ordered more than two months' severance pay. The law does not provide for reinstatement of workers, but a judge may order reinstatement if the termination is deemed to be related to union activities. The law does not provide protection to public employees' organizations from acts of interference by public authorities in their establishment or administration.

The government generally respected freedom of association, although there were some restrictions on the right to collective bargaining. Workers exercised the right to form and join unions, and in general, employers did not use hiring practices to avoid hiring workers with bargaining rights.

The law severely restricts the right to strike, and strikes were rare. When unions followed legal requirements and exhausted arbitration and notified the government in advance of a planned strike, the government permitted strikes and did not use force on strikers. Due to strike requirements, however, many strikes were ruled illegal, and striking workers often risked dismissal. The law prohibits sympathy strikes. Compulsory arbitration was rare and only applied in cases involving a group dispute of workers in essential services.

The government had an insufficient number of labor commissioners, resulting in an estimated two-year backlog of unresolved labor disputes at year's end.

In 2015 the High Court ruled that President Khama and the Directorate of Public Service Management must use the Public Service Bargaining Council when negotiating salary structures for unionized public employees. The Botswana Federation of Public Sector Unions (BOFEPUSU) left the Council in May to protest the government's unilateral wage increases in 2016 and during the reporting year for public employees outside the bargaining council. The ruling party announced in August it would extend the wage increases to BOFEPUSU members, retroactive to the initial increase in April 2016.

b. Prohibition of Forced or Compulsory Labor

The constitution and law prohibit and criminalize all forms of forced and compulsory labor, including by children. Civil society representatives, however, reported in previous years that the government did not effectively enforce relevant laws, particularly in remote areas, mainly because a lack of staff and funding made it difficult for the government to send labor officers to remote areas. Labor inspectors refer cases to the BPS for prosecution. There were reports of probable forced child labor in cattle herding and in domestic servitude (see section 7.c.). There were also anecdotal reports that members of the Basarwa community were subjected to forced labor conditions on cattle farms in the Ghanzi district.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The minimum age for work is 15, but children 14-year-old children may be employed in light work that is “not harmful to [their] health and development” and is approved by a parent or guardian. The law provides that work shall not exceed six hours per day when a child is not in school and five hours when a child is in school. The law prohibits children from engaging in hazardous work, including moving heavy objects that could endanger physical development, working underground or at night, or engaging in any dangerous or immoral work. The law prohibits the exploitation for labor or coercion into prostitution of adopted children.

The Ministry of Employment, Labor Productivity, and Skills Development is responsible for enforcing child labor laws and policies in all sectors; however, resources were too limited for effective oversight in remote areas. District and municipal councils have child welfare divisions, which are also responsible for enforcing child labor laws. Other involved government entities included offices within the Ministry of Education and the Ministry of Local Government and Rural Development. The Advisory Committee on Child Labor facilitated the oversight of child labor issues. It included representatives of various NGOs, government agencies, workers' federations, and employers' organizations and advised the government on the state of children three or four times during the year. The government supported and worked with partners to conduct workshops to raise awareness of child labor. The Department of Labor within the Ministry of Employment, Labor Productivity, and Skills Development collaborated with the Department of Social Services within the Ministry of Local Government and Rural Development to advocate against and raise awareness of exploitative child labor.

Ministers continued to address public gatherings, cautioning against child labor. Penalties for violations of child labor laws range from a fine to up to 12 months' imprisonment in most cases, with stricter penalties for cases involving the worst forms of child labor.

Despite laws and policies designed to protect children from exploitation in the workplace, there were reports of child labor, mostly on subsistence-level cattle posts or farms.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

Labor laws prohibit discrimination on the basis of race, color, tribe, place of origin, social origin, sex, disability, language, sexual orientation and/or gender identity, HIV status, marital status, creed, or social status. The government generally enforced these regulations. In August 2016, after reports of racial discrimination against black employees, the then minister of labor and home affairs threatened expatriate tourism operators with deportation if found guilty of discrimination, racism, abusive language, or harassment of their employees.

e. Acceptable Conditions of Work

According to the Ministry of Employment, Labor Productivity, and Skills Development, the minimum hourly wage for full-time labor in the private sector was determined by sector. The minimum wage for domestic workers was raised six percent in October to over three pula (\$0.30) per hour, or approximately 26 pula (\$2.60) per day. The minimum wage for workers in the agricultural sector was also raised to 700 pula (\$70) per month. According to a 2011 survey of formal sector employment by Statistics Botswana, monthly average earnings were 4,339 pula (\$434) for citizens, 13,055 pula (\$1,306) for noncitizens, and 4,731 pula (\$473) for all employees. The cabinet determined wage policy based on recommendations from the National Economic, Manpower, and Incomes Committee, which consisted of representatives of the government, private sector, and Botswana Federation of Trade Unions. The Ministry of Employment, Labor Productivity, and Skills Development is responsible for enforcing the minimum wage, and each of the country's districts had at least one labor inspector.

The law permits a maximum 48-hour workweek, exclusive of overtime, which is payable at time-and-a-half. The law does not specifically outline rest periods or prohibit excessive compulsory overtime. The law prescribes a 40-hour workweek for most modern private sector jobs and a 40-hour workweek for the public sector. The labor law also applies to farm and migrant workers.

There are limited occupational safety and health (OSH) requirements, and the government's ability to enforce OSH legislation remained limited due to inadequate staffing and lack of clear ministerial jurisdictions. The law provides that workers who verbally complain about hazardous conditions may not be terminated; however, there are no specific provisions in the law allowing workers to remove themselves from situations that endanger their health or safety without jeopardizing their employment. No abuses were reported during the year.

The Department of Labor within the Ministry of Employment, Labor Productivity, and Skills Development employed inspectors to oversee and enforce labor regulations. The government generally enforced wage and hour requirements, but the number of labor inspectors was insufficient to inspect all workplaces.

Formal-sector jobs generally paid well above minimum wage levels. The primary forms of compensation for labor in the informal sector were housing and food, particularly in the agricultural and domestic service areas. Pay in the informal sector was frequently below the minimum wage. Informal-sector workers generally were covered by the same legal protections available to formal-sector workers.

Foreign migrant workers were reportedly vulnerable to exploitative working conditions, mainly in domestic labor. Employers in the formal sector generally provided for worker safety.